

Office of the Secretary of Defense

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time, to amend, repeal, supplement, revise or withdraw all or any of the provisions of this memorandum.

PART 275—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS: RIGHT TO FINANCIAL PRIVACY ACT OF 1978

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APPENDIX N TO PART 275—OBTAINING ACCESS TO FINANCIAL RECORDS OVERSEAS

AUTHORITY: 12 U.S.C. 3401, *et seq.*

SOURCE: 71 FR 26221, May 4, 2006, unless otherwise noted.

§ 275.1 Purpose.

This part:

(a) Updates policies and responsibilities, and prescribes procedures for obtaining access to financial records maintained by financial institutions.

(b) Implements 12 U.S.C. Chapter 35 by providing guidance on the requirements and conditions for obtaining financial records.

§ 275.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the “DoD components”).

(b) Only to financial records maintained by financial institutions.

§ 275.3 Definitions.

(a) *Administrative Summons or Subpoena.* A statutory writ issued by a Government Authority.

(b) *Customer.* Any person or authorized representative of that person who used or is using any service of a financial institution or for whom a financial institution is acting or has acted as fiduciary for an account maintained in the name of that person.

(c) *Financial Institution (for intelligence activity purposes only).* (1) An insured bank (includes a foreign bank having an insured branch) whose deposits are insured under the Federal Deposit Insurance Act.

(2) A commercial bank or trust company.

(3) A private banker.

(4) An agency or branch of a foreign bank in the United States.

(5) Any credit union.

(6) A thrift institution.

(7) A broker or dealer registered with the Securities and Exchange Commission.

(8) A broker or dealer in securities or commodities.

(9) An investment banker or investment company.

(10) A currency exchange.

(11) An issuer, redeemer, or cashier of travelers’ checks, checks, money orders, or similar instruments.

(12) An operator of a credit card system.

(13) An insurance company.

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(14) A dealer in precious metals, stones, or jewels.

(15) A pawnbroker.

(16) A loan or finance company.

(17) A travel agency.

(18) A licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

(19) A telegraph company.

(20) A business engaged in vehicle sales, including automobile, airplane, and boat sales.

(21) Persons involved in real estate closings and settlements.

(22) The United States Postal Service.

(23) An agency of the United States Government or of a State or local government performing a duty or power of a business described in this definition.

(24) A casino, gambling casino, or gaming establishment with an annual gaming revenue of more than \$1,000,000 which is licensed as a casino, gambling casino, or gaming establishment under the laws of a State or locality or is an Indian gaming operation conducted pursuant to, and as authorized by, the Indian Gaming Regulatory Act.

(25) Any business or agency that engages in any activity which the Secretary of the Treasury, by regulation determines to be an activity in which any business described in this definition is authorized to engage; or any other business designated by the Secretary of the Treasury whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

(26) Any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act that is located inside any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

(d) *Financial Institution (other than for intelligence activity purposes)*. Any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution that is located in any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(e) *Financial Record*. An original, its copy, or information known to have been derived from the original record held by a financial institution that pertains to a customer's relationship with the financial institution.

(f) *Government Authority*. Any agency or Department of the United States, or any officer, employee, or agent thereof, to include DoD law enforcement offices, personnel security elements, and/or intelligence organizations.

(g) *Intelligence Activities*. The collection, production, and dissemination of foreign intelligence and counterintelligence, to include investigation or analyses related to international terrorism, by DoD intelligence organizations.

(h) *Intelligence Organizations*. Any element of a DoD Component authorized by the Secretary of Defense to conduct intelligence activities.

(i) *Law Enforcement Inquiry*. A lawful investigation or official proceeding that inquires into a violation of or failure to comply with a criminal or civil statute, or any rule, regulation, or order issued pursuant thereto.

(j) *Law Enforcement Office*. Any element of a DoD Component authorized by the Head of the DoD Component conducting law enforcement inquiries.

(k) *Person*. An individual or a partnership consisting of five or fewer individuals.

(l) *Personnel Security Element*. Any element of a DoD Component authorized by the Secretary of Defense conducting personnel security investigations.

(m) *Personnel Security Investigation*. An investigation required for determining a person's eligibility for access to classified information, acceptance

or retention in the Armed Forces, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigations include investigations conducted for the purpose of making personnel security determinations. They also include investigations of allegations that may arise subsequent to favorable adjudicative action and require resolution to determine a person's current eligibility for access to classified information or assignment or retention in a sensitive position.

§ 275.4 Policy.

It is DoD policy that:

(a) Authorization of the customer to whom the financial records pertain shall be sought unless doing so compromises or harmfully delays either a legitimate law enforcement inquiry or a lawful intelligence activity. If the person declines to consent to disclosure, the alternative means of obtaining the records authorized by subpart B shall be utilized.

(b) The provisions of 12 U.S.C. Chapter 35 do not govern obtaining access to financial records maintained by military banking contractors located outside the United States, the District of Columbia, Guam, American Samoa, Puerto Rico, and the Virgin Islands. The guidance set forth in Appendix N of subpart B may be used to obtain financial information from these contractor operated facilities.

§ 275.5 Responsibilities.

(a) The Director of Administration and Management, Office of the Secretary of Defense shall:

(1) Exercise oversight to ensure compliance with this part.

(2) Provide policy guidance to affected DoD Components to implement this part.

(b) The Secretaries of the Military Departments and the Heads of the affected DoD Components shall:

(1) Implement policies and procedures to ensure implementation of this part when seeking access to financial records.

(2) Adhere to the guidance and procedures contained in this part.

APPENDIX A TO PART 275—OBTAINING BASIC IDENTIFYING ACCOUNT INFORMATION

A. A DoD law enforcement office may issue a formal written request for basic identifying account information to a financial institution relevant to a legitimate law enforcement inquiry. A request may be issued to a financial institution for any or all of the following identifying data:

1. Name.
2. Address.
3. Account number.
4. Type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

B. The notice (paragraph B of Appendix C to this part), challenge (paragraph D of Appendix C to this part), and transfer (paragraph B. of Appendix G to this part) requirements of this part shall not apply when a Government authority is seeking only the above specified basic identifying information concerning a customer's account.

C. A format for obtaining basic identifying account information is set forth in Appendix I to this part.

APPENDIX B TO PART 275—OBTAINING CUSTOMER AUTHORIZATION

A. A DoD law enforcement office or personal security element seeking access to a person's financial records shall, when feasible, obtain the customer's consent.

B. Any authorization obtained under paragraph A. of this appendix, shall:

1. Be in writing, signed, and dated.
2. Identify the particular financial records that are being disclosed.
3. State that the customer may revoke the authorization at any time before disclosure.
4. Specify the purposes for disclosure and to which Governmental authority the records may be disclosed.
5. Authorize the disclosure for a period not in excess of 3 months.

6. Contain a "State of Customer Rights" as required by 12 U.S.C. Chapter 35 (see Appendix J to this part).

7. Contain a Privacy Act Statement as required by 32 CFR part 310 for a personnel security investigation.

C. Any customer's authorization not containing all of the elements listed in paragraph B. of this appendix, shall be void. A customer authorization form, in a format set forth in Appendix J to this part, shall be used for this purpose.

D. A copy of the customer's authorization shall be made a part of the law enforcement or personnel security file where the financial records are maintained.

E. A certificate of compliance stating that the applicable requirements of 12 U.S.C.